

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929

WP(C).No. 24604 of 2006(D)

PETITIONERS:

1. SUNIL KUMAR P.,RADHA BHAVAN,  
PALACE WARD, THEVALLY, KOLLAM-9.
2. VEENA R., 'RAJEEVAM', T.C.30/975(1), KAVARADI ROAD,  
PETTAH, THIRUVANANTHAPURAM -24.
3. SHIVSEENA T.S., T.C.30/1377,  
V.V.ROAD, PETTAH, THIRUVANANTHAPURAM-24.

BY ADV. SRI.ELVIN PETER P.J.

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE  
SECRETARY TO GOVERNMENT, HEALTH AND FAMILY  
WELFARE DEPARTMENT, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM.
2. THE DIRECTOR OF MEDICAL EDUCATION,  
THIRUVANANTHAPURAM.
3. THE DEPARTMENTAL PROMOTION COMMITTEE  
FOR MAKING PROMOTION TO THE CATEGORIES OF  
ASSISTANT PROFESSOR AND ASSOCIATE PROFESSOR IN  
THE DEPARTMENT OF PHARMACY IN MEDICAL EDUCATION,  
REPRESENTED BY ITS CONVENOR, SECRETARY,  
HEALTH AND FAMILY WELFARE DEPT.,SECRETARIAT, TVM.
4. THE KERALA PUBLIC SERVICE COMMISSION,  
REPRESENTED BY ITS SECRETARY, PATTOM,  
THIRUVANANTHAPURAM.

BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC  
GOVERNMENT PLEADER SRI.A.J.VARGHESE

THIS WRIT PETITION (CIVIL) HAVING FINALLY HEARD ON  
15/06/2007 ALONG WITH W.P.(C)22573/06 & 10930/06, THE COURT ON  
THE SAME DAY DELIVERED THE FOLLOWING:

APPNEDIX

PETITIONER'S EXIHIBITS:

Ext.P1: True copy of ranked list for appointment to the post of Lecturers in Pharmacy.

Ext.P2: True copy of the proceedings dated 5.3.2005 of the 11<sup>th</sup> Kerala Legislative Assembly.

Ext.P3: True copy of order, G.O. Dated 16.1.2006 issued by the Govt.

Ext.P4: True copy of select list issued as per G.O. Dated 26<sup>th</sup> August, 2006.

Ext.P5: True copy of the order dated 28.2.2006 in I.A.No.814/2006 in W.P.(C)No.19029/05 of this Hon. Court.

Ext.P6: True copy of the order dated 5.8.2006 of the Government.

Ext.P7: True copy of Govt. Order No.G.O.(MS) 201/06/H&FWD dated 19.9.2006.

// True copy //

P.A.to Judge  
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**A.K.BASHEER, J.**

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W.P.(C)Nos.24604, 22573 & 10930 OF 2006  
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Dated this the 15<sup>th</sup> day of June, 2007

**JUDGMENT**

Since a common issue relating to filling up the post of Lecturer in Pharmacy in the Health and Family Welfare Department arises for consideration in these three writ petitions, they are being disposed of by this common judgment. However, in view of the intervening development, it is not necessary to refer to the various contentions raised by the petitioners.

2. It is the admitted position that petitioners were included in the ranked list published by the Kerala Public Service Commission for appointment to the post of Lecturer in Pharmacy. Grievance of the petitioners was that they were not being advised for appointment in the available vacancies. By an interim order dated September 22, 2006, this court had directed the Department to report the available vacancies to the Kerala Public Service Commission before the expiry of the list i.e., September 23, 2006. Accordingly, nine vacancies were reported provisionally and subject to further orders.

3. Learned Government Pleader submits that one out of the nine vacancies referred to above cannot be advised for the time being, since it is only a leave vacancy. However, the other 8 vacancies can be advised for appointment, he submits. As regard the leave vacancy, it is the case of the department that the incumbent had entered on leave for a period of 118 days and therefore, it is not a substantive vacancy. Per contra, it is the contention of the petitioner in writ petition no.24604/06 that the said incumbent, Dr.Nazarudeen, has remained on leave ever since he was granted leave by the order No.E3/7930/2006/TDMCA dated September 18, 2006. He has not joined duty even today. It is thus contended by the learned counsel that the period of his leave has extended beyond six months and therefore, it is a substantive vacancy under Rule 3 to Rule 5 of Kerala State and Subordinate Service Rule. Anyhow, I do not propose to deal with the above contention at this stage. It will be open to the petitioner to approach respondent no.1 for appropriate action. If it is ultimately found that the said vacancy is also available, necessarily that also shall be advised for

appointment, since 9 vacancies have already been reported before the expiry of the list.

4. In the above facts and circumstances, the writ petitions are disposed of with a direction to the Commission to advise the 8 substantive vacancies of Lecturer in Pharmacy as expeditiously as possible, at any rate, within one month from the date of receipt of a copy of this judgment. Government shall issue appointment orders within one month from the date of receipt of advice. As regards the leave vacancy referred to above, the petitioner, if so advised, may prefer a representation before respondent no.1 within one month from today. An appropriate decision thereon shall be taken by the Government in accordance with law as expeditiously as possible, at any rate, within one month from the date of receipt thereof.

Writ petitions are disposed of as above.

**A.K.BASHEER, JUDGE**

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